

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SCOT TOWNSEND and SHELLY  
TOWNSEND,

No. C 12-06150 JSW

Plaintiffs,

v.

**ORDER TO SHOW CAUSE**

WELLS FARGO BANK, N.A., AMERICAN  
HOME MORTGAGE SERVICING, INC, and  
DOES 1 through 100,

Defendants.

Federal courts are under a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R. Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court determines that subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed. R. Civ. P. 12(h)(3).

The Court notes that there is a split in authority regarding whether national banking associations are citizens of the state where their principal place of business is located, as well as their main office. District courts within California are divided on whether *American Surety Co. v. Bank of California*, 133 F.2d 160 (9th Cir. 1943) and *Wachovia Bank v. Schmidt*, 546 U.S. 303 (2006) are reconcilable. Compare *e.g., Flores v. Wells Fargo Bank, N.A.*, 2012 WL 832546, \*2 (N.D. Cal. March 12, 2012) (finding that *Schmidt* abrogated *American Surety*); with *e.g., Taheny v. Wells Fargo Bank, N.A.*, 2012 WL 1120140, \*6 (E.D. Cal. April 3, 2012); *Rouse*

1 v. *Wachovia Mortg.*, 2012 WL 174206, \*12 (C.D. Cal. Jan. 13, 2012); *Rodriguez v. Wells Fargo*  
2 *Bank, Nat. Ass'n*, 2012 WL 1940572, \*3 (S.D. Cal. May 25, 2012) (finding that American  
3 Surety and Schmidt are reconcilable).

4 The Court HEREBY ORDERS Defendants to show cause why this Court has  
5 jurisdiction in writing by no later than April 17, 2013. Plaintiffs may file a response by no later  
6 than April 26, 2013. The Court FURTHER ORDERS that the hearing on Defendants' motion  
7 to dismiss is CONTINUED to May 31, 2013.

8 **IT IS SO ORDERED.**

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10 Dated: April 8, 2013

  
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12 JEFFREY S. WHITE  
13 UNITED STATES DISTRICT JUDGE  
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